

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

UNITED STATES OF AMERICA,

Case No. 08-CR-0010 (PJS/FLN)

Plaintiff,

v.

ORDER ADOPTING  
REPORT AND RECOMMENDATION

FRANCIS LEROY MCLAIN,

Defendant.

---

David Genrich, UNITED STATES ATTORNEY'S OFFICE, for plaintiff.

Rick E. Mattox, MATTOX LAW OFFICE, for defendant.

This matter is before the Court on defendant Francis Leroy McLain's objection to the May 15, 2008 Report and Recommendation ("R&R") of Magistrate Judge Franklin L. Noel. Judge Noel recommends denying various of McLain's pending pretrial motions. The Court has reviewed de novo those portions of the R&R to which McLain objected, as required by 28 U.S.C. § 636(b)(1) and Fed. R. Crim. P. 59(b)(3), and agrees with Judge Noel's recommendations.<sup>1</sup>

ORDER

Based on the foregoing and on all of the files, records, and proceedings herein, the Court OVERRULES McLain's objection [Docket No. 85] and ADOPTS Judge Noel's Report and Recommendation [Docket No. 82]. Accordingly, IT IS HEREBY ORDERED THAT:

---

<sup>1</sup>McLain filed, as Exhibit A to his objection, a brief from a pending Eighth Circuit case and asserted that the brief's arguments were incorporated by reference in his objection. Obj. at 7 [Docket No. 85]. The local rules do not permit such a practice. Under Local Rule 72.2, an objection to a magistrate judge's report and recommendation may not exceed 3,500 words. If parties could augment their arguments by incorporating other documents by reference, the word limit in Rule 72.2 would become meaningless. The Court has therefore not considered McLain's Exhibit A [Docket No. 86].

1. McLain's motion to suppress evidence obtained as a result of search and seizure [Docket No. 26] is DENIED.
2. McLain's motion to suppress statements, admissions and answers [Docket No. 27] is DENIED AS MOOT.
3. McLain's motion to dismiss for failure to comply with Fed. R. Crim. P. 6(b)(1) and (2) [Docket No. 46] is DENIED.
4. McLain's motion to dismiss for violations of the Fifth Amendment's grand-jury clause [Docket No. 54] is DENIED.
5. McLain's motion to dismiss under Fed. R. Crim. P. 12(b)(2) on the basis that 26 U.S.C. § 7202 was beyond the authority of Congress to enact [Docket No. 56] is DENIED.
6. McLain's motion to clarify status of the grand jury [Docket No. 58] is DENIED.
7. McLain's motion objecting to the juror's oath [Docket No. 64] is DENIED WITHOUT PREJUDICE.
8. McLain's motion to dismiss under Fed. R. Crim. P. 12(b)(3)(A) for unlawful service of process [Docket No. 78] is DENIED.

Dated: June 4, 2008

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge